

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Falcon Industries, Inc.,

Plaintiff,

vs.

Civ. No. 101039 MV/ACT

New Century NcStar, Inc., et al..

Defendants.

AFFIDAVIT BY STEPHEN HINES

1. Nothing within this affidavit is an admission of intellectual property infringement by anyone, anywhere, or at any time.
2. Falcon Industries, Inc. ("Falcon") is a New Mexico corporation headquartered at 115 E Martinez Rd, Moriarty, NM 87035 and employing approximately 18 people with the actual number fluctuating seasonably.
3. Falcon has been assigned and still retains all rights, title, and interest in United States Patent Number 6,725,594 B2 entitled "Rail Cover for Firearm Rail System", hereinafter "the patent".
4. The patent claims certain rail covers that provide a comfortable gripping surface when affixed to firearm mounting rails and Falcon has been actively engaged in the enforcement and licensing of the patent.
5. Primary considerations in determining a licensing fee or reasonable royalty for a specific rail cover have included the rail cover's length (measured in slots of coverage), the honesty and forthright behavior exhibited by the prospective licensee,



prior dealings, and the opportunity to jointly pursue future projects with the prospective licensee.

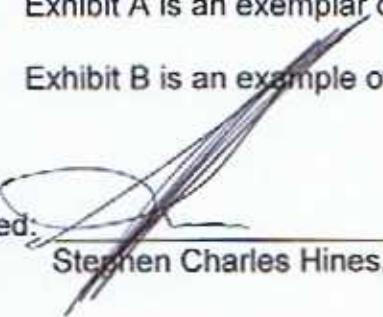
6. On February 8, 2008, Falcon filed a Complaint against Leapers, Inc. ("Leapers") in the United States District Court for the Eastern District of Texas, captioned Falcon Industries, Inc. v. Leapers, Inc., Case No. 2-08CV-052 alleging that Leapers' rail cover having 6 slots of coverage infringed the patent. Leapers promptly entered settlement negotiations, provided a detailed accounting, and admitted distributing 483,570 rail covers of which the majority were included within mounting system kits. Leapers signed a license for \$50,000 and thereafter removed the locking bar from their rail cover design. To the best of Falcon's knowledge, Leapers no longer sells infringing rail covers. Falcon agreed to the approximately \$0.017 per slot royalty because of Falcon's misunderstanding of the patent's value and because of Leapers forthright disclosure of unit sales that could have been otherwise concealed under various part numbers.
7. On January 15, 2010 Falcon filed suit against Austin Precision Products, Inc. ("LaRue") for infringement of the patent. Larue licensed the patent in February 2010 for approximately \$0.05 per slot of coverage. Larue is now a distributor of Falcon products.
8. On November 3, 2010, Falcon filed a complaint having civil case number 1:10-cv-01039 against six defendants in the United States District Court for the District of New Mexico ("the lawsuit") alleging infringement of the patent.



9. Of the six defendants, four have settled out of the lawsuit. Those four defendants are: New Century NcStar, Inc. ("NcStar"); LaserMax, Inc. ("LaserMax"); P&S Products, Inc. ("P&S"); and ME Technology, Inc. ("EMA").
10. LaserMax was distributing a rail cover made by Manta Rails, Inc. ("Manta"). Manta licensed the patent for approximately \$0.05 per locking bar. Falcon did not pursue a per slot agreement because Falcon observed that the locking bar was not needed in Manta's product and that Manta would not be infringing if the locking bar was omitted. Manta expressed a desire to retain the locking bar and so an agreement was reached. Manta and Falcon have since cooperated in the design and development of at least one future product. LaserMax was dismissed from the lawsuit because it is covered by the Manta license.
11. P&S licensed the patent for approximately \$0.05 per slot and a one time licensing fee. P&S and Falcon have since cooperated in the design and development of at least one future product.
12. EMA and Falcon reached a settlement for \$1.12 per 18 slot ladder type rail cover (\$0.062 cents per slot), for \$1 for each long full rail cover (15 slots at \$0.067 per slot), for \$0.50 for each short full rail cover (5 slots at \$0.10 per slot) and for other consideration. EMA promptly stopped selling rail covers. Falcon and EMA do not have further joint business.
13. NcStar and Falcon reached a settlement of \$30,000 for 54,000 rail covers. The NcStar rail covers have a five slot coverage. Therefore, the per slot royalty paid by NcStar is approximately \$0.11. In its accounting, NcStar asserted that all 54,000

units were sold in 2010. NcStar promptly stopped selling rail covers. Falcon and NcStar do not have further joint business.

14. Falcon has no interest in pursuing future projects with TuffForce because Falcon's dealings with TuffForce to date have been deeply unsatisfactory and because TuffForce has not acted in a forthright manner with Falcon. TuffForce's actions and lack of action with regard to the lawsuit are examples of TuffForce's behavior in general towards Falcon.
15. Exhibit A is an exemplar of a TuffForce rail cover. It covers seven slots.
16. Exhibit B is an example of a Picatinny rail.

Signed:  , August 22, 2011
Stephen Charles Hines, President, Falcon Industries, Inc.

Sworn and subscribed before me this 22 day of August, 2011

Maria Fiel A. Deitz, Notary Public

